



CITY OF HAYWARD AGENDA REPORT

Meeting Date 12/15/05
Agenda Item 1

TO: PLANNING COMMISSION

FROM: Arlynn J. Camire, AICP, Associate Planner

SUBJECT: Use Permit Application No. PL-2005-0537 –Shu Jen Chen (Applicant), Lupe Compean (Owner) – Request to Operate Massage Establishment.

The Property Is Located at 22551 Second Street, Suite #200, in the Second Street Plaza, in the Central City- Commercial (CC-C) Subdistrict

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the project is Categorically Exempt from CEQA pursuant to Section 15301, Class (b), Class 1, Existing Facilities; and
2. Approve the Use Permit application subject to the attached findings and conditions of approval.

DISCUSSION:

Shu Jen Chen proposes to provide massage therapy at Lotus Flower Health Center. Currently, Lotus Flower Health Center offers licensed acupuncture services. The massage therapists and the acupuncturist would operate with separate business licenses. The Zoning Ordinance defines a "massage establishment" as any establishment where the principal function is massage. Since the applicant will be operating independently of the acupuncturist, a conditional use permit is required.

The 1,380-square-foot office is located on the second floor of Second Street Plaza, a two-story commercial building located on the northwest corner of Second and B Streets. Businesses in the center include professional offices, personal services, fast food, and retail commercial establishments. Parking is located to the rear of the building in a private parking lot. Sorensen Mortuary is to the west and First United Methodist Church is to the south across B Street. To the east, across Second Street, is a commercial center that contains a branch office of the NAACP, Citibank, a real estate office, a hair salon, and daycare. The southeast corner of the intersection of Second and B Streets contains a 25-unit apartment building.

The General Plan land use designation for the subject property is *Retail and Office Commercial*. The property and surrounding properties are located within the Central City-Commercial (CC-C) Subdistrict.

The approval of this application would introduce a multiple service alternative therapeutic health center into downtown Hayward. As conditioned, the massage service is consistent with the regulations of the Municipal Code and the Central City-Commercial Zoning Subdistrict.

All massage therapists working at this establishment are required to obtain a Massage Technician Permit because they would be providing massage services apart from the therapeutical direction of the acupuncturist. To obtain a Massage Technician Permit, a masseuse must provide valid identification, proof of adequate training, proof of employment with a massage establishment, and undergo a Police Department background check. As a condition of approval, the applicant and all massage therapists are required to submit applications to the Police Department.

The applicant is also required to submit a Massage Establishment Permit application to the Police Department. This procedure requires an extensive background check and requires the applicant to provide a list of all massage therapists she employs, and provide the name of the property owner and a copy of a lease or rental agreement.

The office includes a 54-square-foot doctor's examination room, a changing room, four massage therapy rooms (labeled as Operation Rooms) of various sizes, and a reception room. The facility would include separate restroom facilities for men and women which are required to be completed prior to the commencement of massage services. The hours of operation would be limited by the Municipal Code to from 9:00 am to 9:00 pm. The applicant has agreed to these requirements.

An exterior wall sign would not be installed on the premises. The health center would be listed on the tenant directory.

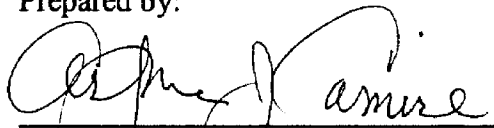
ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from environmental review pursuant to Section 15301, Class 1, Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.

PUBLIC NOTICE:

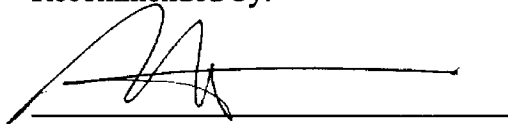
On April 13, 2005, a Referral Notice was mailed to every property owner and occupant as noted on the latest assessor's records within 300 feet of the property. On December 2, 2005, a notice of public hearing was mailed. No additional comments have been received.

Prepared by:



Arlynn J. Camire, AICP
Associate Planner

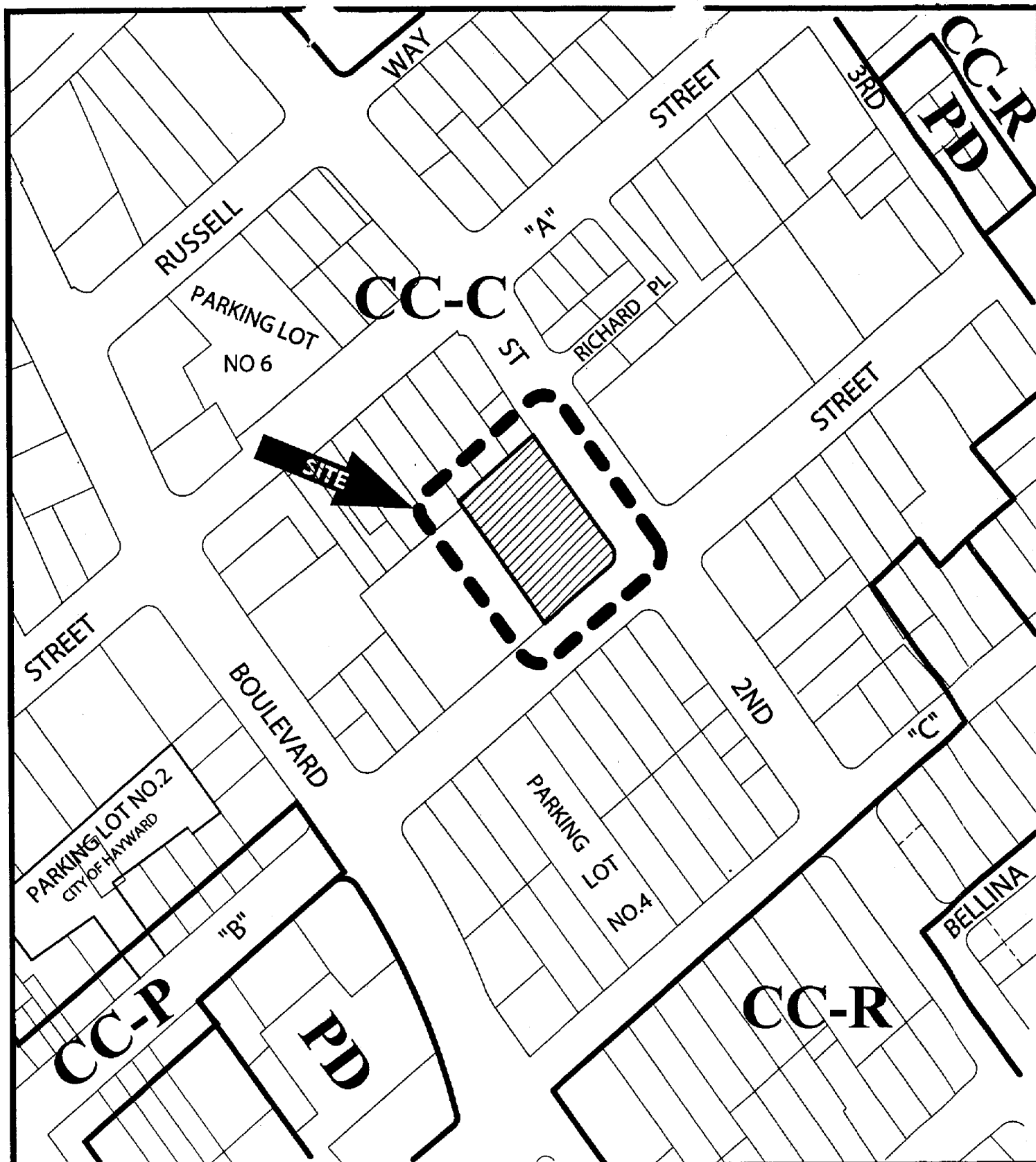
Recommended by:



Richard Patenaude, AICP
Acting Planning Manager

Attachments:

- A Zoning/Area Map
- B Floor Plans
- C Findings for Approval
- D Conditions of Approval



Area & Zoning Map

PL-2005-0175 AUP

Address: 22551 2nd Street

Applicant: Zhang Ping Gao

Owner: Second Street Plaza, LLC

CC-C-Central City-Commercial

CC-P-Central City-Plaza

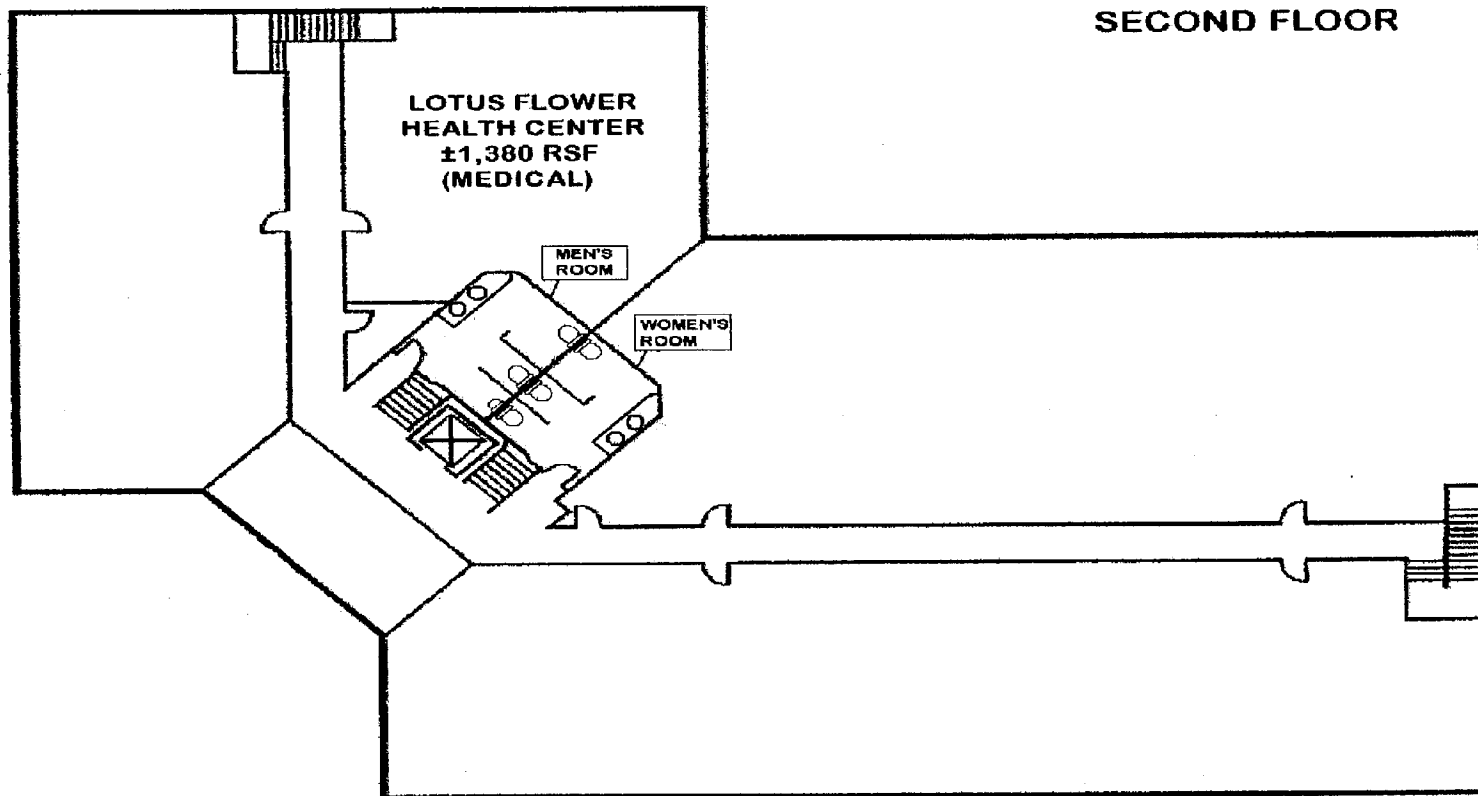
CC-R-Central City-Residential

PD-Planned Development

RM-Medium Density Residential RMB 3.5, RMB 4

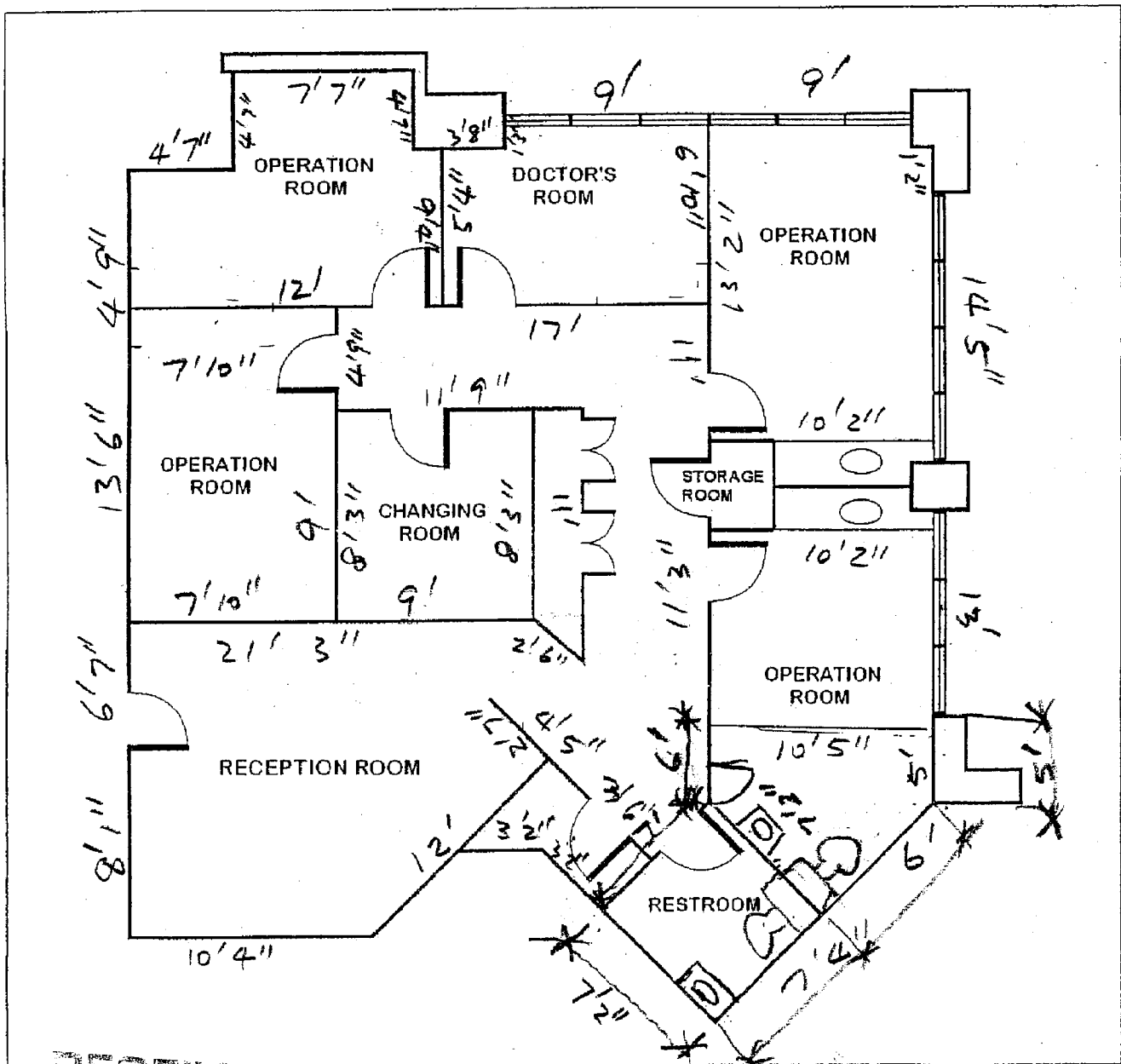


Second Street Plaza
22551 Second Street, Hayward



Office space of Lotus Flower Health Center

±1,380 SF of Medical Space



RECEIVED

NOV 14 2005

PLANNING DIVISION

USE PERMIT APPLICATION NO. PL-2005-0537

Shu Jen Chen (Applicant)

Lupe Compean (Owner)

22551 Second Street, Suite #200

Based on the staff report and the public record:

FINDINGS FOR APPROVAL

- A. Approval of Use Permit Application No. 2005-0537 to allow the operation of a massage establishment in the City Center-Commercial Zoning Subdistrict is exempt from the provisions of California Environmental Quality Act guidelines pursuant to Section 15301, *Existing Facilities*.
- B. A massage establishment is a use that is desirable for the public convenience or welfare in that a multiple service alternative therapeutic health center will be introduced to downtown Hayward.
- C. A massage establishment will not impair the character and integrity of the neighborhood in that it is located entirely within an office plaza and conditions will be imposed to mitigate any unforeseen adverse impacts.
- D. The proposed massage establishment will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the massage establish owner are required to meet all the requirements of the Municipal Code which regulate massage establishments and require all message therapists to obtain Massage Technician Permits and requires the owner to obtain a Massage Establishment Permit. The permits require background checks by the Police Department.
- E. The massage establishment is in harmony with applicable City policies as well as the intent and purpose of the City Center-Commercial Zoning Subdistrict in that the use will be compatible with commercial activity and provides a desirable working environment without being detrimental to the public health, safety or general welfare of surrounding properties.

USE PERMIT APPLICATION NO. PL-2005-0537

Shu Jen Chen (Applicant)

Lupe Compean (Owner)

22551 Second Street, Suite #200

CONDITIONS OF APPROVAL

1. Use Permit Application No. PL-2005-0537 to allow the operation of a massage establishment in the City Center-Commercial Subdistrict, is approved subject to the plans labeled "Exhibit A", and the conditions listed below. This permit becomes void one year after the effective dated of approval, unless prior to that time a building permit application has been submitted and accepted for processing by the Building Official and a Massage Establishment Permit has been authorized, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to December 15, 2006.
2. Any modification to the approved plans or conditions shall require review and approval by the Planning Director.
3. Prior to the commencement of massage services, the following must be completed by the business owner and the applicant:
 - a) A Massage Establishment Permit shall be obtained and shall be maintained as long as massage services are offered. Operations are not permitted to begin prior to obtaining approval of a Massage Establishment Permit from the Hayward Police Department. The business owner or operator shall display the Massage Establishment Permit issued.
 - b) All massage technicians shall have a Massage Technician Permit.
 - c) All massage technicians shall display a license and who is on duty in the establishment in an open and conspicuous place on the premises. Each massage technician's permit shall bear his or her photograph.
4. Massage services are not permitted to be provided until separate men's and women's restrooms have been completed and approved by the Building Official.
5. The property owner/applicant shall maintain in good repair all building exteriors, awnings, walls, lighting, trash enclosure, drainage facilities, driveways and parking areas. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within 72 hours of occurrence.
6. The business owner/operator shall permit the City officials the right to enter the premises used by the massage technicians from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing, or health codes, the California Penal Code and the Hayward Municipal Code.

7. All applicable provisions of Chapter 6, Article 10 (Massage Establishments and Massage Technicians) shall be adhered to. This includes, but is not limited to:
 - a) One artificial white light of not less than forty (40) watts shall be provided and lit in each room while a massage is being administered. The walls shall be clean and painted with an approved washable mold resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the massage operation shall be maintained in a clean and sanitary condition. Separate restrooms shall be provided for men and women.
 - b) Towels, sheets, and linens of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, clothes, and sheets shall not be used for more than one person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets, provided that such paper is used once for every person and then discarded into a sanitary receptacle.
 - c) Dressing and locker facilities shall be available for patrons. Security deposit facilities for the protection of the valuables of the patron shall also be available.
 - d) All main external front entrance doors into the establishment and all internal doors leading to massage areas shall remain unlocked during the business hours of the massage establishment.
8. The establishment shall comply with the following operating requirements:
 - a) Each person employed or acting as a massage technician shall have a valid permit issued by the City of Hayward and it shall be unlawful for any owner, operator, responsible managing employee, manager or permittee in charge of or in control of the establishment to employ or permit a person to act as a massage technician as defined herein who is not in possession of a valid massage technician's permit.
 - b) All massage services shall be limited to the hours from 9:00 am to 9:00 pm.
 - c) A list of services available and the cost of such services shall be posted in an open, public place on the premises and shall be described in readily understandable language. No owner, operator, responsible managing employee, manager, or permittee shall permit and no massage technician shall offer to perform any services other than those posted.
 - d) To protect patrons from potential health and sanitary hazards, all employees and massage technicians shall be clean and shall perform all services on the premises in full, clean, outer garments. Clothing furnished to patrons by the establishment shall not be used by more than one (1) patron unless it has first been laundered and disinfected.
 - e) No person shall enter, be or remain, in any part of a massage establishment while in possession of, consuming, or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, manager, or permittee shall not permit any such person to enter or remain upon such premises.
9. The business owner or operator shall maintain a register of all persons employed as massage technicians and their permit numbers. Such register shall be available for inspection at all times during regular business hours.

10. Violation of these conditions is cause for revocation of the use permit after public hearing before the duly authorized review body.
11. If it comes to the attention of the Planning Director that there are problems occurring as a result the massage services, the Director may call the use permit application up to the Planning Commission for consideration of imposing additional conditions or revocation.